

**Letter of Findings Number: 43-20100695
Underground Storage Tank Fees
For the Tax Years 1999-2009**

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ISSUES

I. Underground Storage Tank Fee – Imposition.

Authority: IC § 6-8.1-1-1; IC § 6-8.1-5-1; IC § 13-23-12-1; IC § 13-23-12-4; IC § 13-23-12-7; [328 IAC 1-3-3](#).

Taxpayer protests the imposition of fees and penalties for unpaid underground storage tank fees.

II. Tax Administration – Ten Percent Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the negligence penalty.

III. Tax Administration – Interest.

Authority: IC § 6-8.1-10-1.

STATEMENT OF FACTS

Taxpayer operates a gas station and convenience store in Indiana. At Taxpayer's gas station are three underground storage tanks. These underground storage tanks were purchased by Taxpayer and installed at Taxpayer's gas station in 1998. However, it was not until 2010 that Taxpayer discovered that it was required to pay an annual underground storage tank registration fee for each year going back to 1999. The Department assessed registration fees for each year from 1999 to 2010. The Department also assessed a 10 percent penalty and interest on each registration fee. The Department also assessed a total of \$126,000 in "environmental penalties." These environmental penalties consisted of: \$6,000 for 2003; \$12,000 for 2004; \$18,000 for 2005; \$24,000 for 2006; \$30,000 for 2007; and \$36,000 for 2008.

Taxpayer does not protest the required storage fees, but protests the assessment of the remaining penalties and interest on the registration fees and all the environmental penalties. An administrative hearing was held, and this Letter of Finding results.

I. Underground Storage Tank Fee – Imposition.

DISCUSSION

IC §13-23-12-1 imposes a fee on underground storage tanks. Although the Indiana Department of Environmental Management (IDEM) regulates underground storage tanks for the State, IC §13-12-12-4 mandates that the Department of Revenue collect and deposit the underground storage tank fees. IC § 6-8.1-1-1 defines "listed tax" to include "the underground storage tank fee ([IC 13-23](#))." The laws and regulations concerning the Department's collection of listed taxes apply to the Department's collection of the underground storage tank fees. All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1 (c).

The fee on USTs is imposed at IC §13-23-12-1 as follows:

(a) Each year the owner of an underground storage tank that has not been closed before July 1 of any year under:

(1) rules adopted under [IC 13-23-1-2](#); or

(2) a requirement imposed by the commissioner before the adoption of rules under [IC 13-23-1-2](#);
shall pay to the department of state revenue an annual registration fee.

If an owner of an UST does not pay their annual registration fees described in IC § 13-23-12-1, the owner "shall be assessed a penalty of not more than two thousand dollars (\$2,000) per underground storage tank for each year that passes after the fee becomes due and before the fee is paid." IC § 13-23-12-7(a). This penalty is referred to as the "environmental penalty." [328 IAC 1-3-3\(e\)\(3\)](#). The Indiana Administrative Code clarifies this penalty, stating that:

For sites containing only tanks that were never registered, or sites containing only tanks for which no tank fees were paid when due, the penalty will be calculated at two thousand dollars (\$2,000) under [IC 13-23-12-7\(a\)](#) per petroleum underground storage tank per year that passes after each year's fee is due.
[328 IAC 1-3-3\(f\)\(2\)\(A\)](#).

Because taxpayer owned three USTs, the Department assessed \$6,000 for 2003; \$12,000 for 2004; \$18,000 for 2005; \$24,000 for 2006; \$30,000 for 2007; and \$36,000 for 2008. This is because the penalty is cumulative. Per IC § 13-23-12-7(a), the penalty is "two thousand dollars (\$2,000) per underground storage tank **for each year that passes after the fee becomes due** and before the fee is paid" (**Emphasis added**). For example, if a fee on one of the tanks that was due in 2004 was not paid until 2008, and then \$2,000 is assessed **for each year that passed** before that 2004 year fee was paid (\$2,000 for 2004; \$2,000 for 2005; \$2,000 for 2006; and \$2,000 for

2007). The same is true for the 2005 fee if it was not paid until 2008, the 2006 fee if it was not paid until 2008, and so on. With that being the case, the environmental penalties were assessed as illustrated below:

	2003	2004	2005	2006	2007	2008
2003 Fees	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000
2004 Fees		\$6,000	\$6,000	\$6,000	\$6,000	\$6,000
2005 Fees			\$6,000	\$6,000	\$6,000	\$6,000
2006 Fees				\$6,000	\$6,000	\$6,000
2007 Fees					\$6,000	\$6,000
2008 Fees						\$6,000
Subtotal	\$6,000	\$12,000	\$18,000	\$24,000	\$30,000	\$36,000

Taxpayer argues that they did register the underground storage tanks with IDEM in 1998 as required. However, neither the Department nor IDEM has any record of the underground storage tank registration forms being filed until November 2010. A Notification for Underground Storage Tanks form dated 10/9/1998 was attached to the Protest letter dated November 10, 2010. Taxpayer could not provide confirmation of sending the form to the Department nor IDEM. Taxpayer could not provide confirmation that the form was received by the Department nor IDEM. Therefore, without records to the contrary from Taxpayer, Taxpayer cannot meet its burden of proof to show that the Notification for Underground Storage Tanks was filed.

Taxpayer makes the argument that the State was aware of that the underground storage tanks existed, and that Taxpayer should have been billed much earlier. Even if one could argue that the knowledge of one Agency of the State that the underground storage tanks existed imputes knowledge to all other agencies of the State or that submitting one document to IDEM constitutes a de facto registration of underground storage tanks with IDEM, this is beside the point. The environmental penalties at issue here have not been assessed for failing to notify IDEM that Taxpayer had brought into use or service three new underground storage tanks. The environmental penalties have been assessed because Taxpayer failed to pay six consecutive annual \$90 registration fees for each of its three underground storage tanks, all of which went unpaid. Taxpayer still did not pay the annual registration fees, and therefore the environmental penalties were properly assessed.

Alternatively, Taxpayer contends that if the fee payments had not been made, the failure to do so could not have been their fault, because they did not know about the underground storage tanks registration fee requirements. Taxpayer states that since they paid other fees or taxes to the State, presumably they would not have deliberately avoided paying this one fee; especially when there was nothing to gain from not paying the \$270 in fees each year. Be that as it may, ignorance of the law is no excuse for not paying what is owed to the State. Since the annual registration fees were not paid, the environmental penalties were properly assessed.

Taxpayer raises other arguments relating to the fairness of the penalty. Since the Department must make its determination on legal grounds, the Department cannot reduce or waive the penalties for equitable reasons. The penalty has been assessed in accordance with what is provided for in the statute as passed by the legislature.

FINDING

Taxpayer's protest is respectfully denied.

II. Tax Administration – Ten Percent Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1. Indiana Regulation [45 IAC 15-11-2](#)(b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. **Ignorance of the listed tax laws, rules and/or regulations is treated as negligence.** Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer. **(Emphasis added).**

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2](#)(c) as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;

- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer has not established that its failure to pay the assessed tax was due to reasonable cause rather than negligence.

FINDING

Taxpayer's protest to the imposition of penalty is denied.

III. Tax Administration – Interest.

DISCUSSION

Taxpayer protests the interest assessed and argues that it is an unfair burden, given that he was not informed of the relevant law.

Taxpayers who fail to file a return, to pay taxes, or who "incurs a deficiency upon a determination by the department," are subject to interest on the nonpayment. IC § 6-8.1-10-1(a). Interest continues to accrue until final payment is made. IC § 6-8.1-10-1(e) does not allow the waiver of interest.

Taxpayer has not provided documentation in support of its protest of the imposition of interest, but more importantly, the Department is not authorized to waive interest under IC § 6-8.1-10-1(e). As such, the Department finds the assessment of interest proper and denies the interest protest.

FINDING

Taxpayer's protest is denied.

CONCLUSION

Taxpayer's protest is denied.

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